
	<b>LOS LUNAS POLICE DEPARTMENT</b>	
	ADMINISTRATION	NUMBER: ADM.02.03
	EFFECTIVE DATE: February 17, 2010	
	SUBJECT: Search and Seizure REVIEW DATE: August 27, 2015	
AMENDS/ SUPERSEDES:		NMSA:
NMMLEPSC STANDARDS: _____ ADM.02.03		APPROVED BY CHIEF OF POLICE NAITHAN G. GURULE  Signature

## I. POLICY

- A. It is the policy of this department to provide every individual we come into contact with the right to be free from unreasonable searches and seizures in compliance with both Federal and State Constitutions. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act.

## II. PURPOSE

- A. This policy provides general guidelines for Los Lunas Police Department personnel to consider when dealing with search and seizure issues.

## III. DEFINITIONS:

### Search

Police action is termed a search where (1) there is a prying into hidden places by the police officer: and (2) the person whose premises, vehicle or person is being searched has a reasonable expectation of privacy.

### Should

Within the contents of this policy the word "should" is defined as a

recommendation, taking into account all facts and circumstances related to a specific event.

#### **IV. SEARCH AND SEIZURE**

**This policy outlines the following types of searches and seizures:**

- A. Exigent circumstances.
- B. Consent.
- C. Search incident to a lawful arrest.
- D. Vehicle inventory.
- E. Protective frisk based on reasonable suspicion.
- F. Residences.
- G. Strip/ Body Cavity.

#### **V. SEARCH PROCEDURES**

- A. Officers will conduct person searches with dignity and courtesy.
- B. Officers will conduct property searches in a manner that returns the condition of the property to its pre-search status as nearly as reasonably practicable.
- C. Officers should attempt to acquire keys to locked property when a search is anticipated and the time and effort required to gain the keys makes it a practicable option.
- D. It is the responsibility of each individual officer to search a prisoner for weapons or contraband anytime he gains custody of that prisoner, regardless of whether the prisoner was previously searched by another officer.
- E. When safety permits:
  - 1. Officers should explain to the person being searched the reason for the search and how the search will be conducted.
  - 2. Officers will conduct all searches in front of a mobile audio/video recording system or body worn camera system, unless facts and circumstances create an exigency for an immediate search out of camera view. In either case all facts and

circumstances related to the search will be documented in an incident report.

(a) If a mobile audio video recording system or an officer of the same gender as the person being searched is unavailable, a second officer or supervisor should be present.

(b) Officers should use the back side of their hands and fingers to frisk/search sensitive areas of the opposite gender to include the breast, crotch, and buttocks.

(c) Audio/ Video recording equipment will be activated during the duration of the search.

F. ALL searches and seizures should be documented in an incident report regardless if an arrest was made or not.

## **VI. EXIGENT CIRCUMSTANCES**

**Exigent Circumstances permitting entry into premises without a warrant or valid consent generally include any of the following:**

- A. The reasonable belief that a person within is in need of immediate aid.
- B. The need to protect or preserve life or avoid injury.
- C. Imminent escape of a suspect.
- D. The reasonable belief that contraband is about to be removed or destroyed.
- E. Public safety.

**An exigency created by the officer's own conduct as an excuse for a warrantless entry is not permitted.**

## **VII. CONSENT**

- A. Entry into a location or vehicle for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. Officers must be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation. A search by consent is only allowed if the following criteria are met:

1. Consent is voluntary (e.g., clear, specific and unequivocal).
  2. Consent is obtained from a person who has the authority to give the consent (e.g., care, custody and control of the location or vehicle).
  3. The search does not exceed the scope of the consent given.
- B. Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, either expressed or implied.
- C. Although officers are not required to conduct searches within the plain view of suspects, those who have the authority to grant or revoke consent should be in a position to communicate a withdrawal of consent should they so desire. If consent was obtained by telephone from a person who has authority to grant the consent, the person will be provided with contact information to revoke the consent.
- D. Absent other legal justification, any related search will be discontinued at any point that consent is withdrawn, even if the withdrawal is made by a different party who is at the scene and who also has authority over the area being searched.

## **VIII. HOW TO DOCUMENT CONSENT**

- A. Consent requests and authorization for all vehicle and residences shall be documented on the Department approved *Consent to Search Forms*, *report narratives* and will also be recorded by audio and/or video.
1. If at any time after the search has begun the person revokes their consent, the officer will immediately stop and search no further.
  2. If consent is revoked, the officer will note the revocation in a narrative.
  3. Officers shall utilize audio/ video recording equipment during the duration of any search.

## **IX. SEARCH INCIDENT TO ARREST/ CUSTODIAL SEARCH**

**The general authority to search incident to a lawful custodial arrest is not qualified or limited by the type of arrest. Objects of the search are weapons, evidence, and/or means of escape.**

- A. Persons:
1. When officers make a lawful arrest, they are permitted to

conduct a contemporaneous search of the arrestee. Such a search safeguards the arresting officer and others nearby from harm while ensuring that the arrestee will not discard or destroy evidence.

2. It is entirely reasonable for arresting officers to search the area where the defendant might reach in order to grab a weapon or evidence.

B. Vehicles:

1. If officers do not have a valid reason to search a vehicle after making an arrest (e.g. probable cause) a search warrant will need to be obtained.

## **X. VEHICLE INVENTORY**

**An inventory is a legitimate law enforcement activity that is not a search and that sometimes incidentally, results in the discovery of evidence. Vehicle inventories will be conducted in accordance with *Policy OPR.07.02*. The purpose of a vehicle inventory is to document contents of a vehicle prior to it being towed and to protect the department from claims of lost or stolen property.**

## **XI. FRISK (PAT DOWN) FOR WEAPONS**

**A frisk is a mere pat-down of the outer clothing area. The purpose of a limited weapons frisk after an investigatory stop is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. An officer does not need to be absolutely certain that an individual is armed; the issue is whether a reasonably prudent officer would justifiably believe that he/ she or others were in danger.**

A. Persons:

1. A frisk is a limited patting of the outer surfaces of a person's clothing in an attempt to find weapons. A frisk can only be used by officers when they justifiably stop someone and have a reasonable fear for their safety, the safety of the public, or when a cautious and prudent officer under the same or similar circumstances would conduct a pat-down.
2. Normally, officers cannot put their hands under the suspect's outer clothing until they feel something they reasonably believe is a weapon. If the outer clothing is too bulky to allow officers to decide if a weapon is concealed underneath, outer

clothing such as overcoats and jackets may be opened to allow a pat down of the inner clothing, such as shirts and trousers.

3. Officers conducting a pat down of an individual will articulate in an incident report the facts and circumstances that would cause a reasonable officer to reasonably believe a person may be armed with a weapon.
4. Officers will not simply write in a narrative that a pat down was completed for "officer safety"; instead officers will clearly articulate ALL facts and circumstances that caused the officer to reasonably believe that a subject may be armed.
5. If during the course of a pat down an officer feels an object and it is immediately apparent the object is contraband, the object will be admissible. If however, the officer knows or should know the object is not a weapon and it is not immediately apparent that the object is contraband, the officer cannot continue to explore or manipulate to determine if the object is contraband or not ( Also known as "plain feel").

## **XII. RESIDENCES**

**Every person has a reasonable expectation of privacy inside his/ her home and a search of a residence will not be conducted without a valid search warrant, exigent circumstances, or valid consent.**

**Once lawfully inside a residence, officers may conduct a protective frisk of a subject if the officer has a reasonable belief that the person is armed and dangerous. In addition, the Fourth Amendment permits a limited protective sweep of a residence when the searching officer possesses a reasonable belief that the area to be swept harbors an individual posing a danger to those on scene. The sweep will not last longer than is necessary to dispel the reasonable suspicion of danger.**

## **XIII. STRIP/ BODY CAVITY SEARCHES**

**This department recognizes that the use of strip searches and body cavity searches may, under certain conditions, be necessary to protect the safety of officers, civilians and other prisoners; to detect and secure evidence of criminal activity; and to safeguard the security, safety and related interests of**

**this agency's prisoner detention and holding facilities. Recognizing the intrusiveness of these searches on individual privacy, however, it is the policy of this department that such searches shall be conducted only with proper authority and justification, with due recognition and deference for the human dignity of those being searched and in accordance with the procedural guidelines for conducting such searches as set forth in this policy.**

**A. Strip Search**

Any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of any or all skin surfaces including genital areas, breasts and buttocks.

1. Individuals arrested for traffic violations and other minor offenses of a nonviolent nature shall not be subject to strip searches unless the arresting officer has articulable, reasonable suspicion to believe that the individual is concealing contraband or weapons. Reasonable suspicion may be based upon, but is not limited to the following:
  - a. The nature of the offense charged.
  - b. The arrestee's appearance and demeanor.
  - c. The circumstances surrounding the arrest.
  - d. The arrestee's criminal record, particularly past crimes of violence and narcotics offenses.
  - e. The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest.
  - f. Detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.
2. Field strip searches of prisoners shall be conducted only in the rarest of circumstances under exigent circumstances where the life of officers or others may be placed at risk, and only in privacy with the explicit approval of a supervisory officer.
3. When authorized by facts and circumstances, strip searches may be conducted only in the following:
  - a. In conformance with approved hygienic procedures and professional practices.

- b. In a room authorized for this purpose (e.g. booking room, holding cell etc.)
  - c. By the fewest number of personnel necessary and only by those of the same sex.
  - d. Under conditions that provide privacy from all but those authorized to conduct the search.
  - e. In the view of audio/ video recording systems
- 4. Following a strip search, the officer performing the search shall submit a written report to the supervisory authority that details, at a minimum, the following:
  - a. Date and place of the search.
  - b. Identity of the officer conducting the search.
  - c. Identity of the authorizing personnel.
  - d. Identity of the individual searched.
  - e. Those present during the search.
  - f. A detailed account of the facts and circumstances prior to, during and after the search.
  - g. A detailed description of the nature and extent of the search.
  - h. Any weapons, evidence or contraband found during the search.

#### B. Body Cavity Searches

Any search involving not only visual inspection of skin surfaces but the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity.

- 1. Body cavity searches other than the mouth shall not be conducted by Los Lunas Police Department personnel.
- 2. The officer shall consult with his immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and/or poses a threat to the safety of officers or others and/or the security of the department's detention operations.



3. If probable cause exists for a body cavity search, an affidavit for a search warrant shall be prepared that clearly defines the nature of the alleged offense and the basis for the officer's probable cause.
4. On the basis of a search warrant, a body cavity search shall be performed only by an authorized physician or by other medically trained personnel at the physician's direction.
5. For safety and security reasons, the search shall be conducted in a detention facility and/ or in the room designated for this purpose (e.g. hospital).
6. Body cavity searches shall be performed with due recognition of privacy and hygienic concerns previously addressed in this policy.